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February 2, 1998

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Comments of Comcast Corporation in Response to Notice of Proposed Rulemaking, CS Docket No. 97-248, RM No. 9097

Dear Ms. Salas:

Please accept for filing the enclosed original and eleven copies of the Comments of Comcast Corporation in response to the Notice of Proposed Rulemaking in the above-referenced proceeding. We are filing eleven copies so that each Commissioner can receive a personal copy of the Comments. As requested in the Notice, we are also delivering a copy of the Comments to Deborah Klein of the Cable Services Bureau and to the Commission's copy contractor, International Transcription Services, Inc.

If you have any questions regarding this filing, please contact me.

Sincerely,

Karen Post

Karen A. Post

Enclosures

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection	)	CS Docket No. 97-248
and Competition Act of 1992	)	
	)	RM No. 9097
Petition for Rulemaking of	)	
Ameritech New Media, Inc.	)	
Regarding Development of Competition	)	
and Diversity in Video Programming	)	
Distribution and Carriage	)	

COMMENTS OF COMCAST CORPORATION

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Counsel for Comcast Corporation

Dated: February 2, 1998

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SUMMARY OF ARGUMENT

The Commission should not impose time limits on its resolution of program access disputes. In spite of its scarce resources, the Commission has consistently resolved program access cases in an expeditious manner and has committed to continue to do so.

Second, the Commission should not amend the program access rules regarding discovery. There is no evidence that the current discovery procedure is failing to function effectively. The Commission can determine case-by-case whether it needs further information to be able to resolve a program access dispute, and can, in such circumstances, request discovery. Mandatory discovery will only delay and complicate program access proceedings and is inconsistent with the goal of expeditious resolution of such cases.

Third, the Commission should not award damages for program access violations. The Commission has the authority to issue fines and forfeitures for program access violations, which serves as a sufficient deterrent. Trying to determine damages would be impossibly speculative, and the Commission does not attempt to do so in the most closely-related or analogous complaint proceedings.

Fourth, the Commission does not have the authority to regulate non-satellite delivered programming under the program access rules, even if such programming formerly was delivered via satellite. Moreover, Comcast believes that it would be bad policy for Congress to expand the scope of the program access law to include terrestrially-delivered programming services.

Fifth, Comcast believes that the Commission should clarify its rules to provide that members of a cooperative buying group with adequate financial reserves not be required to provide joint and several liability.

Before the
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and Diversity in Video Programming	)	
Distribution and Carriage	)	

COMMENTS OF COMCAST CORPORATION

Comcast Corporation ("Comcast"), by its counsel, submits these comments in response to the Commission's Notice of Proposed Rulemaking in CS Docket No. 97-248, RM No. 9097 ("NPRM"), relating to the program access rules, 47 C.F.R. Sections 76.1000 - 1004.

INTRODUCTION

Since their codification in 1993, the Commission's satellite program access rules have done precisely what they were intended to do -- ensure that all MVPDs have access to substantial and attractive programming delivered by satellite. The availability of this programming to noncable MVPDs has contributed to the dramatic growth of competition to cable television operators. Fourth Annual Report, CS Docket No. 97-141, at 116 (released January 13, 1998) ("Fourth Annual Report"). Both the number of noncable MVPD subscribers and the noncable share of the MVPD marketplace continue to grow, and some of the country's most powerful companies have launched determined and well-financed terrestrial and satellite competitors to cable operators. Id. at 6-9.

Congress revisited the rules when it enacted the 1996 Telecommunications Act, and made only one change, to include common carrier video programmers within the rules. Clearly, the current rules are working. No credible evidence has been presented to the contrary. As outlined more fully below, Comcast urges the Commission to reject the four most significant and unwarranted changes that are being considered in this proceeding.

DISCUSSION

1. The Commission Should Not Impose Time Limits on Itself for Resolving Program Access Proceedings.

There is no reason to impose an artificial deadline on the Commission to issue decisions in program access cases. Ameritech's calculation that the average processing time for these cases is over one year is misleading. Many of the cases used in Ameritech's calculation are geographic uniformity cases that raised program access issues only tangentially. Moreover, many program access cases have been stayed at the parties' request due to ongoing settlement negotiations. After deleting those cases from the calculation, the average processing time has been 8.1 months (excluding the 30 day answer period and 20 day reply period). NPRM at 16-17.[1/]

Considering the scarcity of Commission resources, this processing time is quite reasonable. Just last year, the Commission itself determined that "the procedures established in

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1/ The Commission updated these numbers just last week when it reported to Congress that the average resolution time for program access cases is 8.7 months (including the 50-day pleading cycle). Deleting negotiated settlements and cases in which program access was raised only tangentially lowered the average processing time to 7 months (including the 50-day pleading cycle). Responses to Questions, Subcommittee on Telecommunications, Trade and Consumer Protection, Committee on Commerce, U.S. House of Representatives, dated January 23, 1998 ("Commission Responses to Congress"), at 9. In either case, it is clear that the Commission is acting expeditiously to resolve program access disputes.

our rules for program access complaints already provide for an expedited procedure to resolve such disputes, and . . . [no one has] presented any additional evidence to suggest that revising these procedures would further accelerate this process." Third Annual Report, CS Docket No. 96-133, 12 FCC Rcd 4358, 4437, at ¶ 159 (released January 2, 1997). At that time, the Commission reaffirmed its commitment "to continue . . . to process program access complaints in the most expeditious fashion possible. . . . " Id. Ameritech's petition presents no new evidence to suggest that the Commission has failed to live up to this commitment.

In addition, there have been only three program access cases that have been decided in favor of the complainant. All three of these cases were decided expeditiously, so there was no prejudice or disadvantage to the complainants.[2/] The cases that have taken longer to resolve were either delayed by agreement of the parties while they negotiated a settlement of their dispute, or were cases that were won by the defendants. In those cases, any delay was not prejudicial to the complainants.

Congress has neither mandated nor even suggested that time limits are necessary or important in program access cases. In the 1992 Cable Act, Congress enacted time limits where it

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2/ See CellularVision of New York, L.P. v. SportsChannel Associates, 10 FCC Rcd 9273, CSR-4478-P (filed February 22, 1995, initial decision issued August 24, 1995); Corporate Media Partners d/b/a Americast and Ameritech New Media, Inc. v. Rainbow Programming Holdings, Inc., DA 97-2040, CSR-4873-P (filed December 6, 1996, decided September 23, 1997); Bell Atlantic Video Services Co. v. Rainbow Programming Holdings, Inc. and Cablevision Systems Corp., 12 FCC Rcd 9892, CSR-4983-P (filed March 28, 1997, decided July 11, 1997). One of these cases was resolved within two months of the close of the pleading cycle, and the average resolution of these cases was less than five months after the close of the pleading cycle.

believed that time limits were necessary or appropriate.[3/] In the 1996 Telecommunications Act, Congress imposed deadlines where it thought they were warranted,[4/] but did not impose deadlines on the Commission for the resolution of program access disputes. In fact, in the 1996 Act, Congress also modified Section 628,[5/] but did not impose a statutory deadline on the Commission for resolving program access disputes. Clearly, Congress has demonstrated its satisfaction with the timeliness of the Commission's program access decisions.

The Commission has scarce resources, and imposing non-statutory time limits would divert the Commission's resources from its other statutory obligations, without regard to the Commission's prerogative to determine its policy priorities in a manner that best serves the public interest. In addition, each case is different. Some are more complicated than others and the Commission may well need more time to evaluate the evidence and the issues in a complex case. Moreover, other proposed rule changes in the NPRM (e.g., adding discovery as of right and imposing damages) would further burden the Commission in its efforts to resolve program access disputes quickly.

Finally, the NPRM also seeks comment on whether the time for answering a program access complaint should be shortened. Comcast believes it should not. It takes substantial time and resources to gather the relevant information needed to prepare a complete and thorough

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3/ See, e.g., 47 U.S.C. § 534(d)(3) (requiring FCC to resolve must carry complaints within 120 days).

4/ See, e.g., 47 U.S.C. § 271(d)(3) (requiring the FCC to grant or deny applications from Bell operating companies for authorization to provide long distance service within 90 days); 47 U.S.C. § 534(h)(1)(C)(iv) (requiring the FCC to resolve market modification requests within 120 days); 47 U.S.C. § 543(c)(3) (requiring the FCC to resolve rate complaints within 90 days).

5/ See 47 U.S.C. § 548(j) (applying program access rules to satellite programming owned by common carrier video programmers).

answer to a program access complaint. Moreover, Section 76.1003(f) of the Commission's rules discourages the filing of additional pleadings. Because the defendant's answer often will be the only opportunity the defendant has to explain and defend itself in the complaint proceeding, it is critical that the Commission provide the defendant with enough time to submit a complete and thorough answer.

2. The Commission Should Not Provide for Discovery as of Right in Program Access Cases.

The NPRM also seeks comment on whether the Commission should amend the program access rules to permit discovery as of right. Section 76.1003(g) of the Commission's rules currently provides for discovery when the Commission staff determines that, in order to resolve the complaint, it needs information that is not contained in the complaint, answer and reply. See also First Report and Order, MM Docket No. 92-265, 8 FCC Rcd 3359, 3420-21 (released April 30, 1993) ("Report and Order"), at ¶ 135. The Commission certainly has been able to determine when it needs more information than it has available. The fact that the Commission does not regularly order discovery demonstrates that complainants and the Commission generally receive all the relevant documents during the normal pleading cycle, making discovery as of right unnecessary. See Commission Responses to Congress at 11 (Commission reports that discovery is usually not necessary because "relevant documents are often attached to pleadings.") Moreover, pursuant to Section 76.1003(g)(2), the Commission can permit or direct the parties to submit discovery proposals, on which the Commission may base its own discovery requests. The Commission has done so in at least one case, NRTC v. EMI, 10 FCC Rcd 9785 (1995).

The program access complaint procedure was established as a quick and efficient way to resolve program access disputes. Report and Order at ¶ 17. The Commission reports that

program access cases are frequently settled by the parties before there is any need to issue discovery requests. See Commission Responses to Congress at 11. The Commission's current rules are designed to avoid time-consuming and complex adjudication of program access disputes. The Commission has recognized that discovery is necessarily time-consuming and frequently contentious, and causes substantial delays. See Implementation of the Telecommunications Act of 1996 - Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed against Common Carriers, Notice of Proposed Rulemaking, CC Docket No. 96-238, 11 FCC Rcd 20823, 20842 at ¶ 49 (released November 27, 1996) ("In our experience, discovery has been the most contentious and protracted component of the formal complaint process."). Moreover, discovery as of right and the disputes discovery would spawn would interfere with complainants' demand for quicker resolution of program access complaints. The disputes that would inevitably result from discovery as of right would unnecessarily burden the Commission staff and exhaust scarce Commission resources. Complainants with complaints sounding in unfair competition or antitrust law remain free to file lawsuits in court and engage in full-blown discovery.

Finally, discovery as a matter of right would encourage fishing expeditions and would increase the potential for other abuses. For all these reasons, Comcast agrees with the Commission's tentative conclusion (NPRM at 19, ¶ 44; Commission Responses to Congress at 12) not to revise the program access rules regarding discovery. The current rules strike the proper balance by providing limited and targeted discovery when necessary, while avoiding unduly disruptive and unnecessary discovery.

3. The Commission Should Not Assess Damages for Program Access Violations.

The Commission has determined repeatedly that the sanctions available pursuant to Title V, together with the program access complaint procedure, are sufficient to deter violations of the program access rules, making awards of damages unnecessary. Memorandum Opinion and Order on Reconsideration of the First Report and Order, 10 FCC Rcd 1902, 1911, at ¶ 18 (released December 19, 1994); Third Annual Report, 12 FCC Rcd at 4437, at ¶ 160. There is no new evidence to justify changing this conclusion now.

Ameritech and a few other parties assert that damages are necessary as a means of deterring program access violations. However, the Commission has authority to issue fines and forfeitures pursuant to Title V, which serve as an effective deterrent. There is no evidence that the current rules are not working to prevent rule violations without the assessment of damages. As noted above, only three program access cases have ever been won by complainants.

Moreover, in many if not all program access cases, it would be extremely difficult to determine damages. Trying to determine or quantify "damages" for periods in which a distributor is without a specific programming service would be impossibly speculative (as would trying to quantify differing non-economic terms and conditions). Involving the Commission in these kinds of determinations (and in trying to defend them) would be a drain on valuable and scarce Commission resources with no countervailing benefit.

Finally, the Commission does not typically issue damages awards for violations of its most closely-related or analogous rules. The Commission, for example, does not award damages in common carrier complaint cases, which serve as the model for the program access complaint procedures. NPRM at 3. It also does not award damages for other types of rule violations

relating to programming or signal carriage by MVPDs, including the must carry, syndicated exclusivity, and network non-duplication rules. There is no reason for the Commission to begin awarding damages for violations of the program access rules.

4. The Program Access Rules Cannot -- And Should Not -- Be Broadened to Include Terrestrially-Delivered Programming Services.

A. The Commission Lacks Jurisdiction to Regulate Terrestrially-Delivered Programming Services Under the Program Access Rules.

Congress granted the Commission only limited authority to adjudicate disputes regarding access to programming.[6/] Section 628 provides that the program access rules pertain to "satellite cable programming" and "satellite broadcast programming." 47 U.S.C. § 548. Specifically,

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6/ It is axiomatic that "an administrative agency is a creature of statute, and can only act within the jurisdiction conferred by its enabling statute." Hi-Craft Clothing Co. v. NLRB, 660 F.2d 910, 916 n.3 (3d Cir. 1981) (quoting Dickinson, Administrative Justice and Supremacy of Law 41 (1927)). See Iowa Utils. Bd. v. Bell Atlantic Corp., 120 F.3d 753, 800, 803, 805-06 (8th Cir. 1997) (FCC regulations that exceeded the scope of the jurisdiction Congress granted the FCC are vacated); Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 374 (1986) ("an agency literally has no power to act . . . unless and until Congress confers power upon it" to do so); Southeastern Comm. College v. Davis, 442 U.S. 397, 411-12 (1979) (agency lacks the authority to impose an obligation that is contrary to the clear meaning of its enabling statute); FCC v. Midwest Video Corp., 440 U.S. 689, 708-09 (1979) (FCC cannot regulate unless Congress specifically authorizes such regulation); Regents of Univ. Of Georgia v. Carroll, 338 U.S. 586, 597-98 (1950) (FCC "must find its powers within the compass of the authority given it by Congress."). Any action beyond the scope of an agency's delegated authority is ultra vires and will be set aside. Hi-Craft Clothing, 660 F.2d at 916 n.3 (quoting Dickinson at 41).

Section 628(b) provides:

> It shall be unlawful for a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.

47 U.S.C. § 548(b) (emphases added).

Section 628(i) defines "satellite cable programming" by reference to Section 705 of the Communications Act of 1934, as amended.[7/] Section 705 defines "satellite cable programming" as "video programming which is transmitted via satellite and which is primarily intended for the direct receipt by cable operators for their retransmission to cable subscribers." 47 U.S.C. § 605(d)(1) (emphasis added). Section 628(i) defines "satellite broadcast programming" as "broadcast video programming when such programming is transmitted by satellite and the entity retransmitting such programming is not the broadcaster or an entity performing such retransmission on behalf of and with the specific consent of the broadcaster." 47 U.S.C. § 548(i) (emphasis added). The Commission has jurisdiction to adjudicate disputes regarding access to cable or broadcast programming only if such programming meets these statutory definitions of "satellite cable programming" or "satellite broadcast programming." Programming that is distributed via terrestrial means clearly does not constitute either "satellite cable programming" or "satellite broadcast programming."

7/ Section 705 governs the protection and piracy of certain satellite delivered programming.

This limitation in the statute is neither unintentional nor a mistake. Congress knew what it was doing and meant what it said when it used the phrases "satellite cable programming" and "satellite broadcast programming" in Section 628. Congress used these phrases deliberately, consistently and repeatedly in Section 628 -- no fewer than eighteen (18) times for each phrase. Moreover, throughout Section 628, Congress never once failed to use the complete phrases -- "satellite cable programming" and "satellite broadcast programming" -- when granting the Commission jurisdiction or prohibiting conduct. The meaning of the statute is clear on its face. It applies only to "satellite cable programming" and "satellite broadcast programming." Because the statute is unambiguous, the clear meaning of the statute must be regarded as conclusive. Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43 (1984) ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."); Estate of Colwart v. Nicklose Drilling Co., 505 U.S. 469, 476 (1992) (It is a "basic and unexceptional rule that courts must give effect to the clear meaning of statutes as written."); Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980) ("[T]he starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive."). Absent a change in the statute, the Commission has no authority to adjudicate disputes concerning programming services that are not delivered via satellite.

B. It Would Be Bad Policy to Extend the Scope of the Program Access Law to Cover Terrestrially-Delivered Programming Services.

Congress easily could have extended the scope of Section 628 to cover terrestrial programming services when it revisited program access in enacting the 1996 Telecommunications Act, but chose not to do so.[8/] Presumably, that is because it would have been bad policy to extend the program access law to cover terrestrially-delivered services. It is extraordinary for Congress to require the sale of speech (i.e., programming) in any industry. Notwithstanding, Congress drew its limits when it enacted the program access law. It apparently did not intend to make all programming into a mere commodity. Cable operators certainly are not uniquely able to invest in and create attractive programming. With almost ten million homes (more than one in eight) now receiving multichannel video programming from someone other than a traditional cable operator (see Fourth Annual Report at 6), public policy supports encouraging investment in programming by all competitors, rather than discouraging such investment by one competitor through more intrusive regulation.

Congress deliberately limited the scope of Section 628 to include only satellite-delivered programming and not terrestrially-delivered programming. In doing so, Congress provided alternative MVPDs with access to many of the most popular and attractive major national cable programming services, such as CNN, HBO, TBS, and Discovery. These national programming services and brands are the kinds of services that Congress believed that noncable competitors needed to be able to compete effectively with cable, and the law plainly is working in this regard. The program access law grants alternative MVPDs access to all 68 national satellite-

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8/ Congress amended the law to include satellite programming by common carrier video programmers. See 47 U.S.C. § 548(j).

delivered vertically-integrated programming services, and it appears that most of the popular and widely-circulated of the 104 national satellite-delivered non-vertically-integrated programming services are also fully available to alternative MVPDs, even though they are not covered by the program access law. See Commission Responses to Congress at 1. Clearly, there is a vast amount of programming available to cable's competitors as a result of the program access law.

By not extending the law to include terrestrially-delivered programming services, Congress struck a balance between ensuring competitors access to many of the major national name-brand cable programming services and encouraging the development of local and regional cable programming services, which are sometimes delivered terrestrially. See Commission Responses to Congress at 6 (Commission acknowledges that local and regional programming "most readily lends itself to terrestrial means of delivery" because satellite delivery generally is most cost- effective when there is a greater area of distribution). Comcast is a defendant in a highly-publicized pending program access case involving a terrestrially-delivered local sports network, Comcast SportsNet (CSR-5112-P). There are, however, many other local and regional services (both vertically and non-vertically integrated) currently being delivered by means other than satellite, such as fiber, microwave, or tape. These services include The Arabic Channel, Cable TV Network of New Jersey, ChicagoLand Television News, Ecumenical Television Channel, Hip Hop Network, International Television Broadcasting, MediaOne News, New York 1 News, Newschannel 8, Orange County NewsChannel and Pittsburgh Cable News Channel. See Cable Television Developments -- Fall 1997, published by NCTA, at 98-117. Development of such local and regional programming is inherently risky because it can be a costly

undertaking[9/] with a potential viewership tightly constrained by the size of the local or regional television market. It would be unfair -- and beyond the scope of Congressional intent -- to require these risk-takers to make their programming available to competitors who not only do not share in the risk but who also generally have a much greater potential market for distribution. Congress did not want to discourage investments in services that are responsive to local and regional needs and interests; accordingly, Congress limited the scope of the program access law to satellite-delivered (and, generally, national) programming services.

Policy-makers must tread very carefully to the extent that they are urged to "deem" terrestrial programming to be satellite programming. Such an argument is not only disingenuous, but also would upset a carefully-tailored balance in the current law. In the years since the 1992 Act, Congress has not disturbed the balance it carefully set -- and it should not do so now. Moreover, the Commission cannot disturb this balance.

C. There is No Evidence of a Problem Requiring Extension of the Scope of the Program Access Law to Include Terrestrially-Delivered Programming Services.

In addition to the policy concerns discussed above, there simply is no evidence of a problem of restricted availability of programming to consumers that would justify extending the scope of the program access law to include terrestrially-delivered programming services. The Commission itself stated last week that "the concerns that have been raised in this area to date

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9/ For example, approximately $11,000,000 in capital costs went into the creation of local, original programming for Comcast SportsNet, including purchasing equipment, building a control room, and building a studio and office space. It also costs approximately $3,500,000 per year in incremental operating expenses in order to create the tremendous amount of original locally produced programming on Comcast SportsNet, rather than simply purchasing a backdrop service. See Affidavit of Sam Schroeder ("Schroeder Affidavit"), at ¶ 7, attached as Exhibit 4 to defendants' Answer to and Request for Dismissal of Program Access Complaint, in DirecTV, Inc. v. Comcast Corporation, Comcast-Spectacor, L.P. and Comcast SportsNet, CSR-5112-P.

relate more to potential future problems than to problems that may have already occurred." Commission Responses to Congress at 6. Competitors to cable have access to a tremendous amount of attractive programming. For example, DirecTV's monthly program guide is approximately 300 pages long. See, e.g., February edition of See, DirecTV's program guide (attached as Exhibit 1). Clearly DirecTV (as well as other alternative MVPDs) offer an extraordinary wealth of attractive programming to their subscribers. DirecTV consistently touts not only this wealth of programming, but also attractive programming found only on DirecTV. See DirecTV advertisements regarding exclusive NFL programming package; John Dempsey, "WB Pay TV Plays Music," Daily Variety, Dec. 11, 1997 at 39 (DirecTV has exclusive rights to telecast a weekly half-hour music magazine series); "DIRECTV Agreement with Action Adventure Network Marks Entry Into Original First-Run Entertainment," Business Wire, Nov. 12, 1997 (DirecTV has exclusive rights to telecast original television movies and series with major creative and acting talent); Ken Amos, "Channeling a Continuing Look at the Best and Worst of Sports Viewing," The Sporting News, Nov. 10, 1997 at 4 (DirecTV has exclusive rights to college basketball package); "Channel Earth is on the Air with Sony's Digital Solutions," Business Wire, Nov. 6, 1997 (DirecTV has exclusive telecasting rights to Channel Earth programming) (attached as Exhibit 2). This is in stark contrast to Comcast SportsNet, which is not exclusive to any cable operator.

In addition, Comcast is aware of no national cable programming service that delivers its signal terrestrially. Nor has any national network even hinted that it is considering moving its programming service from satellite to terrestrial delivery. Although a number of local and regional services are delivered terrestrially, the use of terrestrial technology alone (without clear

and convincing evidence of an intent to evade) does not constitute an "evasion" of the program access law. There are often valid business reasons why a programming service is delivered terrestrially, rather than via satellite. For example, it can be significantly less expensive to deliver a local or regional programming service terrestrially, rather than via satellite.[10/] See Commission Responses to Congress at 6. Terrestrial distribution is not new; it has been used for decades. The program access law should respect the fact that terrestrial distribution is a legitimate and long-established business practice.

In sum, the statute on its face clearly applies only to programming services that are delivered via satellite. Absent Congressional action to change the law, the Commission simply does not have the authority to regulate terrestrially-delivered programming services under the program access law. Moreover, it would be bad policy to regulate and discourage investment in such services, and there is no evidence of a need for such regulation in any case.

10/ For example, with respect to Comcast SportsNet, it costs approximately $600,000 per year to deliver the service via microwave and fiber optic cable (via a pre-existing terrestrial infrastructure) to the 60 headends currently receiving the signal. If Comcast SportsNet were to be delivered via a full band transponder (assuming one were available), it would cost approximately $2,280,000 per year. If Comcast SportsNet were to be delivered via a second tier transponder, such as GE-7, it would cost approximately $1,400,000 per year. It would also cost approximately an additional $24,000 per year to uplink the signal, plus a one-time cost of approximately $250,000 to build an earth station uplink facility. The other option of delivering the service via satellite would be to digitally compress the signal and have it share digital capacity with other programming services, which would cost between approximately $720,000 and $900,000 per year. This is also more expensive than delivering the service via microwave and fiber optic cable, particularly because there would still be additional uplinking costs and the costs of building an earth station uplink facility. In addition, the signal would need to be encoded, at an additional cost of $100,000, and it would cost up to $90,000 to purchase equipment for each of the headends to be able to receive and decode a digitally compressed signal. See Schroeder Affidavit at ¶ 8.

5. Buying Groups Should Be Encouraged and Onerous Conditions on Them Should Be Limited.

The Commission also seeks comment on SCBA's proposal to clarify the program access rules to provide that members of any cooperative buying group that maintain adequate financial reserves should not be required to provide joint and several liability. Rising programming prices are a major contributor to increases in cable rates. Because buying groups provide the opportunity for distributors (of all technologies) to obtain programming at more reasonable rates and terms, the Commission should do what it can to eliminate onerous and unnecessary conditions on participation in buying groups. Requiring joint and several liability of buying group members is an unnecessary disincentive to participation in buying groups, and Comcast supports the elimination of this requirement.

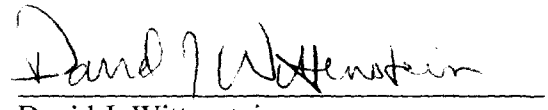
CONCLUSION

For the foregoing reasons, Comcast urges the Commission not to amend the program access rules with respect to the imposition of time limits, discovery as of right, or the assessment of damages. In addition, the Commission lacks the authority to extend the scope of the program access law beyond satellite-delivered programming services, and it would be bad policy for the

scope of regulation to be expanded in such a manner. Finally, Comcast asks the Commission to modify its rules to encourage participation in cooperative buying groups, and to limit onerous conditions on them.

Respectfully submitted,

COMCAST CORPORATION

By: 

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Its Counsel

Dated: February 2, 1998

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defeats. The problems that plagued the Panthers in the loss to the Steelers were the same ones they had throughout the preseason: fumbles, a sudden inability to stop the run and a poor pass rush.

Carolina fumbled three times on Friday, losing one. Third in the NFL last year in turnovers at +13, the club was –8 in the preseason.

The Panthers entered the Steelers game determined to stop the run, yet even with steamroller Jerome Bettis sitting this one out, Pittsburgh rushed for 144 yards on 24 carries. Carolina allowed 97.6 yards a game on the ground in '96 but 142.3 this summer.

Saddled with the holdout of outside linebacker Kevin Greene, who led the NFL with 14½ sacks last year, the Panthers had a total of five sacks in the preseason. Last year they led the league, with 60 sacks. With no end to Greene's holdout in sight, Carolina got what it considered the perfect solution dropped into its lap late Friday when the Saints released pass rusher Renaldo Turnbull, who had played six years ago for Dom Capers and Vic Fangio when they were assistant coaches with New Orleans. Now the coach and defensive coordinator of the Panthers, Capers and Fangio knew they could plug Turnbull into Greene's spot in the Panthers' defense and have him game-ready within a week. So late Sunday, Carolina waived Greene and signed Turnbull to a two-year contract and began prepping him for this Sunday's season opener

HEINZ KLUETMEIER

Even Nickerson (prone) can't always get his man.

THE INNER GAME

Tackling Barry Sanders

UBIQUITOUS BUCCANEERS middle linebacker Hardy Nickerson is the only NFL defender to regularly stymie Detroit running back Barry Sanders, the league's leading rusher in three of the last seven seasons, including 1996. In one of their two games against Tampa Bay last season Sanders, who averaged 97.1 yards per game in '96, was held to 73; in another game the year before, the Bucs limited Sanders to 48 yards.

"The first thing I do is try to look eyeball-to-eyeball with Barry," says the 6' 2", 230-pound Nickerson, of lining up across from the 5' 8", 200-pound Sanders. "I might be able to see him peeking in the direction he's running, but almost always he's got his head down, not giving me or anyone else a clue. Then I'll look to see who's blocking me. Usually it's center Kevin Glover. When the ball's snapped, Glover or a guard will lunge at me, trying to take me on. My job is to shed that block with my hands as soon as I can. That's half the battle, getting rid of the blocker. Assuming I do that, then I look for Barry.

"When he's got the ball, he'll usually run wide. Then I have to figure out what angle to take on him. If there's a corner forcing him in, then I can go right for him. If there's a safety inside, I have to take a wide angle toward the sidelines, kind of overrun him, so we're protected outside.

"When I get close, I pounce. I never wait for him to make a move. A lot of guys sit back and wait for him to give them a move, then go for him. I think you've got to initiate the action, or he's going to make you look sick. When I get close enough, I reach out to any part of his body, and whatever I touch I lock onto. No way he'll get free then. I try to grab the outside of his shoulders because that's where his jersey is easiest to get ahold of. Then I just ride him. I will never, ever let go. When he goes down, for me, it's like scoring a touchdown. I've just done the hardest thing a defensive player can do in the NFL.

"I love playing Barry. I pride myself on tackling, and chasing Barry is the greatest opportunity I have to show what kind of tackler I am." —P.K.

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